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Attorneys for Defendants CITY AND COUNTY OF SAN FRANCISCO and CITY OF SAN FRANCISCO UPTOWN PARKING CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CRAIG YATES,
Plaintiff,
v.
UNION SQUARE; CITY AND COUNTY OF
SAN FRANCISCO, CITY OF SAN
FRANCISCO UPTOWN PARKING
CORPORATION; EMPORIO RULLI IL
CAFFE UNION SQ.; EMPORIO RULLI IL
CAFFE UNION SQ., INC.; and DOES 1
through 50, Inclusive,
Defendants.

CASE NO. C074087 JSW

**NOTICE OF MOTION; MOTION FOR THE
COURT TO DECLINE SUPPLEMENTAL
JURISDICTION OVER AND TO DISMISS
PLAINTIFF'S STATE LAW CLAIMS [28
U.S.C. § 1367(c)] AND TO STRIKE
PLAINTIFF'S UNSUPPORTED AND
IMPROPER DAMAGE PRAYERS FROM
THE COMPLAINT [FRCP 12(f)]**

Accompanying Papers: Memorandum of Points and Authorities; Request for Judicial Notice; (Proposed) Order

Date: January 18, 2008
Time: 9:00 a.m.
Dept: Crtrm. 17
Judge: The Hon. Jeffrey S. White

Complaint filed: August 9, 2007
Trial date: none set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE: that on January 18, 2008, at 9:00 a.m., before the Honorable Jeffrey S. White in Court Room 17 of the above-referenced court located at 450 Golden Gate Ave., 16th Floor, San Francisco, California, Defendants City and County of San Francisco ("CCSF") and City of San Francisco Uptown Parking Corporation ("Uptown") (collectively,

1 "Moving Parties") will, and hereby do, make a motion to this Court for the Court to Decline
 2 Supplemental Jurisdiction Over and to Dismiss Plaintiff's State Law Claims [28 U.S.C. § 1367(c)]
 3 and to Strike Plaintiff's Unsupported and Improper Damage Prayers from the Complaint [FRCP
 4 12(f)] (the "Motion").

5 By this Motion, Moving Parties request the Court, because of irreconcilable
 6 interpretations between the California state and federal courts of the requirements for entitlement to
 7 statutory damages under the California Unruh Civil Rights Act, decline to extend supplemental
 8 jurisdiction over Plaintiff's state law claims and dismiss the same. 28 U.S.C. § 1367(c).

9 Pursuant to Federal Rule of Civil Procedure, 12(f), Moving Parties also request the
 10 Court strike out the following portions of the Complaint as un-supported and improper damage
 11 prayers:

12 **Requests For Damages Under Title II Of The ADA:**

13 As a result of such discrimination, in violation of section 202 of the
 14 ADA, plaintiff is entitled to the remedies, procedures and rights set
 15 forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C.
 16 §794a), as provided by section 203 of the ADA, including injunctive
 17 relief and damages for violation of his civil rights, as previously
 18 plead.

19 Complaint ¶ 24 p.11 line 27 through p.12 line 4.

20 Plaintiff requests appropriate damages for each of his complained
 21 experiences for the two year period preceding the filing of this
 22 complaint, as well as litigation expenses and costs, and reasonable
 23 attorneys' fees as provided by law.

24 Complaint ¶ 26, p.12 lines 10-14.

25 Award damages against the government entity defendants pursuant to
 26 Title II of the Americans with Disabilities Act.

27 Complaint, Prayer for Relief, p.39 lines 15-17.

28 **Requests For Damages Under Section 504 Of The Rehabilitation Act:**

29 Plaintiff seeks damages for the ongoing and continuous denial of his
 30 Civil Rights from the date of his initial attempts to use the square, or
 31 the dates he was deterred (preceding back to two years before the
 32 filing of the original complaint) to the time of trial or remediation, and
 33 for physical, mental and emotional injury, all to his damages
 34 according to proof.

35 Complaint ¶ 32, p.14 lines 21-27

1 Award damages against all defendants pursuant to section 504 of the
 2 Rehabilitation Act.

3 Complaint, Prayer for Relief, p.39 lines 13-14.

4 **Requests For Attorneys' Fees And Litigation Costs Under California Code Of**
Civil Procedure Section 1021.5:

5 ...justifying "public interest" attorneys' fees pursuant to the provisions
 6 of California Code of Civil Procedure Section 1021.5.

7 Complaint ¶ 47, p.22 lines 9-10.

8 Plaintiff further request that the court award statutory attorneys' fees,
 9 litigation expenses and costs to plaintiff pursuant to section 19953
 Health & Safety Code, Civil Code section 55, and Code of Civil
 Procedure section 1021.5, all hereinafter prayed for.

10 Complaint ¶ 61, p.27 lines 1-5.

11 ...justifying "public interest" attorneys' fees pursuant to the provisions
 12 of California Code of Civil Procedure Section 1021.5.

13 Complaint ¶ 76, p.32 lines 26-28.

14 ...plaintiff seeks attorneys' fees pursuant to section 1021.5 California
 15 Code of Civil Procedure...

16 Complaint ¶ 80, p.34 lines 6-7.

17 ...justifying "public interest" attorneys' fees pursuant to the provisions
 18 of California Code of Civil Procedure Section 1021.5.

19 Complaint ¶ 84, p.35 lines 15-17.

20 ...plaintiff seeks attorneys' fees pursuant to section 1021.5 California
 21 Code of Civil Procedure...

22 Complaint ¶ 89, p.36 lines 19-20.

23 Award all costs of this proceeding and all reasonable attorneys' fees,
 24 litigation expenses and costs as provided by law, including but not
 25 limited to those recoverable pursuant to the provisions of section 54.3
 26 and 55 Civil Code, section 1021.5 Code of Civil Procedure...

27 Complaint Prayer for Relief, p.39 lines 20-24.

28 This Motion is based upon this notice and motion, the accompanying Memorandum
 of Points and Authorities in Support of Motion for the Court to Decline Supplemental Jurisdiction
 Over and to Dismiss Plaintiff's State Law Claims [28 U.S.C. § 1367(c)] and to Strike Plaintiff's
 Unsupported and Improper Damage Prayers from the Complaint [FRCP 12(f)] filed and served

1 concurrently herewith, the accompanying Request for Judicial Notice in Support of Motion for the
2 Court to Decline Supplemental Jurisdiction Over and to Dismiss Plaintiff's State Law Claims [28
3 U.S.C. § 1337(c)] and to Strike Plaintiff's Unsupported and Improper Damage Prayers from the
4 Complaint [FRCP 12(f)] filed and served concurrently herewith, as well as the complete files and
5 records of this action and on such other and further evidence, arguments, and authorities as may be
6 submitted prior to and during the hearing on this Motion.

7 DATED: December 12, 2007

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9 By: /S/ Martin H. Orlick

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